

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. LEONA CINCO ET AL., DEFENDANTS AND APPELLANTS.*G. R. No. 3664. August 17, 1907*

Ponente: JOHNSON, J.

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These defendants were charged with the crime of bandolerismo in the Court of First Instance of the Province of Leyte, committed as follows:

"That in and during the month of July, 1906, and within the jurisdiction of the municipalities of Tanauan, Tolosa, Dulag, Burauen, Dagami, and Abuyog, of this province, the above-named accused, together with other unknown persons, joined in a conspiracy and organized a gang of robbers for the purpose of stealing carabaos, cattle, horses, rice, pigs, fowl, and other personal property, and also for the purpose of sequestering persons by means of force and violence, and of fighting and slaying men of the United States Army, the Insular police, and the municipal police and other officers of the Insular, provincial, and municipal governments; in that the said accused then and there being armed with bolos, two flintlock muskets, and other deadly weapons, roamed over the country and appeared before Faustino Ablen, the bandit chief; that they put themselves under the command of the latter and received from him three Remington rifles and eight small guns (lantacas), and then under the command of said Faustino Ablen and of the bandit captains Mariano Almaden (alias Marigoso), Margarito Gamba (alias Marga), and Espiridion Rota (alias Pidion), they roamed over the country and within the above-mentioned period-to wit, on the 21st of July, 1906-in the territory of the municipality of Burauen, of this province, in a place commonly known as Maabab, also called Tambis, with premeditation, treachery, and savage wickedness, and equipped with the deadly weapons already described, they and some two hundred men also armed with deadly weapons, attacked a detachment of Constabulary and wounded Scout McBride and Lieutenant Worswick and ten men of the Constabulary; that as the result of their wounds said men died in the above-named place; that the accused and other members of their gang took possession of ten Springfield and one Krag rifles and two revolvers, with which the said men were armed.

"That the accused, Leona Cinco, Fabian Molon, and Alejandro Permejo, in order to carry into effect all the acts above referred, together with other unknown persons, united in a conspiracy and, during the said month of July, 1906, roamed over the country and requested Rufino Suyom, Ventura Saballe, Norberto Permejo, Segundo Cadion, and Pablo Margate, all residents of the barrio of San Vicente, municipality of Tolosa, to join them in order to perform acts of hatred and violence against the troops of the United States Army, the Constabulary, municipal police, and other officers of the Insular, provincial, and municipal governments, by organizing seditious movements, rebellious conspiracies, and insurrections. All contrary to the statute."

They were duly tried in the Court of First Instance of the said province in the month of October, 1906. After hearing the evidence adduced during said trial the lower court found that the evidence was not sufficient to show that Leona Cinco was guilty of the crime charged and she was, therefore, discharged from the custody of the law.

The court further found from the evidence that the following defendants were guilty in the manner and form charged in the complaint: Fabian Molon, Alejandro Permejo, Eugenio Arabia, Victor Saballe, Agustin Cadion,

Simplicio Cinco, Cayetano Cayubit, Benigno Margate, Fernando Saballe, Kosendo Nuevas, Bonifacio Nuevas, Damaso Suyom, Catalino Cadion, Faustino Iriginio, Cenon Cinco, Faustino Saballe, Sergio Calda, Cornelio Silvano, and Jose Cadion; and sentenced Enrique Margate, Rosendo Nuevas, Victor Saballe, Agustin Cadion, Catalino Cadion, Simplicio Cinco, Cayetano Cayubit, Darnaso Suyom, Benigno Margate, Fernando Saballe, Faustino Saballe, Sergio Calda, Bonifacio Nuevas, Cornelio Silvano, Jose Caditin, Faustino Iriginio, and Cenon Cinco to be imprisoned at hard labor for a term of twenty years; Fabian Molon to be imprisoned at hard labor for a period of thirty years, and Eugenio Arabia and Alejandro Permejo to be imprisoned for a period of twenty-five years.

From this sentence of the lower court the defendants, by their attorney, appealed to this court.

An examination of the evidence adduced during the trial is sufficient to convince us that the sentence of the lower court should be affirmed except the sentence imposed upon the said Alejandro Permejo, and as to him the sentence of the lower court is hereby revoked and he is hereby ordered to be discharged from the custody of the law.

The attorney for the appellants assigned as error the fact that the court reopened the case after both sides had rested and after the arguments had been made and the case submitted and an adjournment taken. The judges of the Courts of First Instance are judges of both fact and law, and after hearing all the evidence adduced by the attorneys, if the court is not satisfied, we see no reason why he should not be permitted to call additional witnesses for the purpose of satisfying his mind upon any questions presented during the trial of the case. (See *United States vs. Vizquera et al.*, 4 Phil. Rep., 380.)

The attorney for the appellants also assigns as error the overruling of the demurrer presented by him in the court below. The record brought to this court does not disclose that the appellant made an exception to the ruling of the court below. Upon an examination of the complaint we are unable to find that there is any objection to its form or substance that is sufficient to justify this court in reversing the order of the lower court. Therefore the sentence of the lower court is hereby affirmed, except as hereinbefore indicated, with costs. So ordered.

Arellano, C. J., Torres, Willard, and Tracey, JJ. concur.

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